

(k) Nothing in this section shall preclude the Commission from examining any leverage transaction merchant for compliance with the minimum financial, cover, segregation and sales practice, and related reporting requirements to which such leverage transaction merchant is subject.

(l) In the event a plan is not filed and/or approved for each registered leverage transaction merchant which is a member of more than one self-regulatory organization, the Commission may design and, after notice and opportunity for comment, approve a plan for those leverage transaction merchants which are not the subject of an approved plan (under paragraph (g) of this section), delegating to a designated self-regulatory organization the responsibilities described in paragraph (c) of this section.

[54 FR 41083, Oct. 5, 1989]

§ 31.29 Arbitration or other dispute settlement procedures.

Each self-regulatory organization which has members who are registered as leverage transaction merchants must be able to demonstrate its capability to promulgate rules and to conduct proceedings which provide a fair, equitable and expeditious procedure, through arbitration or otherwise, for the voluntary settlement of a leverage customer's claim or grievance brought against any member leverage transaction merchant or any employee of a member leverage transaction merchant. Such rules shall be consistent with the rules set forth in part 180 of this chapter governing contract market arbitration and dispute settlement procedures.

[54 FR 41084, Oct. 5, 1989; 54 FR 46503, Nov. 3, 1989]

APPENDIX A TO PART 31—SCHEDULE OF FEES FOR REGISTRATION OF LEVERAGE COMMODITIES

(a) Each application for registration of a leverage commodity must be accompanied by a check or money order made payable to the Commodity Futures Trading Commission in an amount to be determined annually by the Commission and published in the FEDERAL REGISTER.

(b) Checks or money orders should be sent to the attention of the Office of the Secre-

tariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. No checks or money orders may be accepted by personnel other than those in the Office of the Secretariat.

(c) Failure to submit the fee with an application for registration of a leverage commodity will result in the return of the application. Fees will not be returned after receipt.

(d) Any firm with an application for registration of a leverage commodity pending on the date that this fee schedule becomes effective must submit its application fee within 10 days of that date. Otherwise, the application shall be deemed withdrawn without prejudice and shall be returned to the applicant.

(Secs. 5, 5a, 8a(5) and 19 of the Commodity Exchange Act (7 U.S.C. 7, 7a, 12, 12a(5), and 23), sec. 26 of the Futures Trading Act of 1982 (7 U.S.C. 16a), Independent Offices Appropriation Act of 1952, as amended by Pub. L. 97-258, 96 Stat. 1051 (Sept. 13, 1982))

[49 FR 25835, June 25, 1984, as amended at 52 FR 22635, June 15, 1987; 60 FR 49335, Sept. 25, 1995]

PART 32—REGULATION OF COMMODITY OPTION TRANSACTIONS

Sec.

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32.13 Exemption from prohibition of commodity option transactions for trade options on certain agricultural commodities.

AUTHORITY: 7 U.S.C. 1a, 2, 4, 6c and 12a, unless otherwise noted.

SOURCE: 41 FR 51814, Nov. 24, 1976, unless otherwise noted.

§ 32.1 Scope of part 32; definitions.

(a) *Scope.* The provisions of this part, except for the provisions of §§ 32.8 and

32.9 which shall in any event apply to all commodity option transactions, shall apply to all commodity option transactions except for commodity option transactions conducted or executed on or subject to the rules of a contract market, or a foreign board of trade, pursuant to section 4c of the Act and the regulations promulgated thereunder.

(b) *Definitions.* As used in this part:

(1) *Commodity option transaction and commodity option* each means any transaction or agreement in interstate commerce which is or is held out to be of the character of, or is commonly known to the trade as, an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty" involving any commodity regulated under the Act other than wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, onions, *Solanum tuberosum* (Irish potatoes), wool, wool tops, fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil and all other fats and oils), cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products and frozen concentrated orange juice;

(2) *Interstate commerce* shall be construed and have the same meaning as set forth in sections 1a(13) and 2(b) of the Act;

(3) *Option customer* means any person who, directly or indirectly, purchases or otherwise acquires for value any interest in a commodity option, but shall not include a person required to register as a futures commission merchant in accordance with this part;

(4) *Purchase price* means the total actual cost paid or to be paid, directly or indirectly, by an option customer for entering into and maintaining an interest in a commodity option transaction by whatever name called; and

(5) *Striking price* means the price at which an option customer may purchase or sell the commodity or the contract of sale of a commodity for future

delivery which is the subject of a commodity option transaction.

(Secs. 2(a)(1), 4c(a)-(d), 4d, 4f, 4g, 4k, 4m, 4n, 8a, 15 and 17, Commodity Exchange Act (7 U.S.C. 2, 4, 6c(a)-(d), 6f, 6g, 6k, 6m, 6n, 12a, 19 and 21; 5 U.S.C. 552 and 552b))

[47 FR 57016, Dec. 22, 1982, as amended at 52 FR 29003, Aug. 5, 1987; 59 FR 5703, Feb. 8, 1994]

§ 32.2 Prohibited transactions.

Notwithstanding the provisions of § 32.11, no person may offer to enter into, confirm the execution of, or maintain a position in, any transaction in interstate commerce involving wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, *Solanum tuberosum* (Irish potatoes), wool, wool tops, fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil and all other fats and oils), cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products, and frozen concentrated orange juice if the transaction is or is held out to be of the character of, or is commonly known to the trade as an "option," "privilege," "indemnity," "bid," "offer," "put," "call," "advance guaranty," or "decline guaranty," except as provided under § 32.13 of this part.

[63 FR 18832, Apr. 16, 1998]

§ 32.3 Unlawful commodity option transactions.

(a) On and after January 17, 1977, it shall be unlawful for any person to accept any money, securities, or property (or to extend credit in lieu thereof) from an option customer as payment of the purchase price in connection with a commodity option transaction unless such person is registered as a futures commission merchant under the Act and such registration shall not have expired, been suspended (and the period of suspension has not expired) or revoked.

(b) On and after January 17, 1977, it shall be unlawful for:

(1) Any person to solicit or accept orders (other than in a clerical capacity)

for the purchase or sale of any commodity option, or to supervise any person or persons so engaged, unless such person is:

(i) Registered as a futures commission merchant under the Act, or

(ii) If such person is an individual, registered under the act as an associated person of a specified person registered as a futures commission merchant under the Act;

(2) Any futures commission merchant to permit an individual to become or remain associated with such futures commission merchant as a partner, officer or employee (or in any similar status or position involving similar functions) in any capacity involving such solicitation, acceptance or supervision if such futures commission merchant knew or should have known that such individual was not registered as an associated person or that such registration has expired, been suspended (and the period of suspension has not expired) or revoked;

(c) A person required to register as a futures commission merchant or as an associated person in accordance with this section which furnishes the services specified in that portion of section 1a of the Act defining the term "commodity trading advisor" shall not be included in the term commodity trading advisor if:

(1) At the time such services are furnished, such person is registered as a futures commission merchant, as a floor broker or as an associated person under the Act, and such registration shall not have expired, been suspended (and the period of suspension has not expired) or revoked; and

(2) The furnishing of such services is solely incidental to the conduct of such person's activities relating to commodity option transactions.

(d) A person registered as a futures commission merchant under the Act, who is required to register as such by virtue of this section, need not register as such in order to comply with this section, but shall immediately notify the Commission in writing, specifying the date such person commenced or intends to commence engaging in activities otherwise requiring registration under this section.

(e) A person registered as an associated person or as a floor broker under the Act, who is required to register as an associated person by virtue of this section, need not register as such in order to comply with this section, but the futures commission merchant employing such person shall immediately notify the Commission in writing, specifying the date such person commenced or intends to commence engaging in activities otherwise requiring registration under this section.

(7 U.S.C. 2, 6c(a), 6c(b) and 12a (Supp. V, 1975))

[41 FR 51814, Nov. 24, 1976, as amended at 42 FR 61831, Dec. 6 1977; 59 FR 5703, Feb. 8, 1994]

§32.4 Exemptions.

(a) Except for the provisions of §§32.2, 32.8 and 32.9, which shall in any event apply to all commodity option transactions, the provisions of this part shall not apply to a commodity option offered by a person which has a reasonable basis to believe that the option is offered to a producer, processor, or commercial user of, or a merchant handling, the commodity which is the subject of the commodity option transaction, or the products or by-products thereof, and that such producer, processor, commercial user or merchant is offered or enters into the commodity option transaction solely for purposes related to its business as such.

(b) The Commission may, by order, upon written request or upon its own motion, exempt any other person, either unconditionally or on a temporary or other conditional basis, from any provisions of this part, other than §§32.2, 32.8 and 32.9, if it finds, in its discretion, that it would not be contrary to the public interest to grant such exemption.

§32.5 Disclosure.

(a) Except as provided in paragraph (b) of this section, prior to the entry into a commodity option transaction, each option customer or prospective option customer shall be furnished a summary disclosure statement by the person soliciting or accepting the order therefor. The disclosure statement shall contain the following:

(1) A brief description of the commodity option transactions being offered including:

(i) The duration of the commodity options being offered and the total quantity and quality of the commodities which may be purchased or sold upon exercise of the options being offered or which underlie the contracts of sale for future delivery which may be purchased or sold upon exercise of such commodity options;

(ii) A listing of the elements comprising the purchase price to be charged, including the premium, markups on the premium, costs, fees and other charges, as well as the method by which the premium is established;

(iii) The services to be provided for the separate elements comprising the purchase price; and

(iv) The method by which the striking price is established;

(2) A description of any and all costs in addition to the purchase price which may be incurred by an option customer if the commodity option is exercised, including, but not limited to, the amount of storage, interest, commissions (whether denominated as sales commissions or otherwise), and all similar fees and charges which may be incurred;

(3) A statement to the effect that the price of the commodity or contract of sale for future delivery underlying each option transaction being offered must either rise above the striking price, or fall below the striking price, as the case may be, by an amount in excess of the sum of the premium and all other costs incurred in entering into and exercising the commodity option in order for the option customer to realize a profit on the commodity option transaction;

(4) A clear explanation of the effect of any foreign currency fluctuations with respect to commodity option transactions which are to be executed on or through the facilities of a foreign board of trade;

(5) The following boldfaced statements on the first page of the summary disclosure statement:

BECAUSE OF THE VOLATILE NATURE OF THE COMMODITIES MARKETS, THE PURCHASE OF COMMODITY OPTIONS IS NOT SUITABLE FOR MANY MEMBERS OF

THE PUBLIC. A PERSON SHOULD NOT PURCHASE A COMMODITY OPTION UNLESS HE IS PREPARED TO SUSTAIN A TOTAL LOSS OF THE PURCHASE PRICE OF THE COMMODITY OPTION. SUCH TRANSACTIONS SHOULD BE ENTERED INTO ONLY BY PERSONS WHO ARE AWARE OF THE POTENTIAL FOR LOSS AND WHO UNDERSTAND THE NATURE AND EXTENT OF THEIR RIGHTS AND OBLIGATIONS.

THESE COMMODITY OPTIONS HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE COMMODITY FUTURES TRADING COMMISSION NOR HAS THE COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS STATEMENT. ANY REPRESENTATION TO THE CONTRARY IS A VIOLATION OF THE COMMODITY EXCHANGE ACT AND THE REGULATIONS THEREUNDER.

(6) Statements to the effect that:

(i) Specific market movements of the commodities or contracts of sale for future delivery underlying the options being offered cannot be accurately predicted, and

(ii) Generally, an option customer will be unable to sell any option purchased in any market to recover any of the purchase price, but rather may only liquidate by exercising an option before the expiration date of the option.

(b) A person shall not be required to deliver the summary disclosure statement to an option customer as required by paragraph (a) of this section if a summary disclosure statement has previously been furnished by such person to the option customer: *Provided, however,* That notwithstanding the foregoing, a disclosure statement shall be delivered in any event (1) upon the request of the option customer, or (2) if the previously delivered disclosure statement has become outdated or has become inaccurate in any material respect.

(c) Prior to the entry into a commodity option transaction, each option customer or prospective option customer shall, to the extent the following amounts are known, be informed by the person soliciting or accepting the order therefor of the actual amount of the premium, markups on the premium, costs, fees and other charges comprising the purchase price, as well as the striking price and all costs to be

incurred by the option customer if the commodity option is exercised.

(d) Not more than 24 hours after the execution of a commodity option transaction, each person which accepts any money, securities or property (or extends credit in lieu thereof) from an option customer as payment of the purchase price in connection with a commodity option transaction shall furnish, by mail or other generally accepted means of communication, such option customer with a written confirmation statement containing at least the following information:

(1) The actual amount of the purchase price including a separate listing of the premium, mark-ups on the premium, costs, fees, and other charges;

(2) The striking price;

(3) The total quantity and quality of the commodity which may be purchased or sold, or which underlies the contract of sale for future delivery which may be purchased or sold, upon exercise of the commodity option;

(4) The exercise date of the commodity option purchased, and in the case of an option on a contract of sale for future delivery, the final trading date on such contract; and

(5) The date the commodity option was executed.

(Approved by the Office of Management and Budget under control number 3038-0003)

[41 FR 51814, Nov. 24, 1976, as amended at 46 FR 63036, Dec. 30, 1981]

§32.6 Segregation.

(a) Any person which accepts money, securities, or property from an option customer as payment of the purchase price in connection with a commodity option transaction shall treat and deal with such money, securities, and property as belonging to such option customer until expiration of the term of the option or, if the option customer exercises the option, until all rights of the option customer under the commodity option have been fulfilled. Such money, securities, and property (1) shall be separately accounted for and segregated as belonging to such option customer, (2) shall be kept in the United States, and (3) shall not be commingled with the money, securities, or property of any other person, including the money, securities, or property re-

ceived by a futures commission merchant to margin, guarantee or secure the trades or contracts of commodity customers (as defined in §1.3(k) of this chapter) or with the money accruing to such commodity customers as the result of such trades or contracts: *Provided, however*, That the money, securities, or property treated as belonging to an option customer may for convenience be commingled with the money, securities, or property treated as belonging to any other option customer and deposited in the same account or accounts with any bank or trust company in the United States. Such money, securities, and property, when so deposited with any bank or trust company, shall be deposited under an account name which will clearly show that it contains money, securities, or property, segregated as required by this part. Each person depositing such money, securities, or property shall obtain and retain in its files for the period provided in §1.31 of this chapter an acknowledgment from such bank or trust company that it was informed that the money, securities, and property therein are being treated as belonging to option customers and are being held in accordance with the provisions of this part. Such bank or trust company shall allow inspection of such accounts at any reasonable time by representatives of the Commission: *Provided, further*, That, up to a maximum of 10 percent of the money, securities or property accepted from an option customer as payment of the purchase price in connection with a commodity option transaction need not be treated and dealt with as belonging to the option customer and segregated as aforesaid.

(b) No money, securities or property deposited in accordance with paragraph (a) of this section shall be held, disposed of, used or treated as belonging to the depositing person or any person other than the option customers of such person: *Provided, however*, That such money may be invested in obligations of the United States, and in obligations fully guaranteed as to principal and interest by the United States. Such investments shall be made through an account or accounts used for the deposit of money, securities or

property received from option customers and proceeds from any sale of such obligations shall be redeposited in such account or accounts. Each person which invests money belonging to option customers in obligations as described in paragraph (b) of this section, shall separately account for such obligations and segregate such obligations as belonging to such option customers. Such obligations may only be deposited with a bank or trust company in the United States and shall be deposited under an account name which will clearly show that it contains obligations treated as belonging to option customers, segregated as required by this part. Each person depositing such obligations shall obtain and retain in its files an acknowledgment from such bank or trust company that it was informed that the obligations are treated as belonging to option customers and are being held in accordance with the provisions of this part. Such acknowledgment shall be retained for the period provided in §1.31 of this chapter. Such bank or trust company shall allow inspection of the obligations at any reasonable time by representatives of the Commission.

(c) Each person which invests money treated as belonging to option customers as permitted hereunder shall keep a record showing the following: (1) The date on which such investments were made, (2) the name of the person through which such investments were made, (3) the amount of money so invested, (4) a description of the obligations in which such investments were made, (5) the identity of the depositories or other places where such obligations are segregated, (6) the date on which such investments were liquidated or otherwise disposed of and the amount of money received on such disposition, if any, and (7) the name of the person to or through which such investments were disposed of.

(d) Persons which invest money in obligations described in paragraph (b) of this section shall include such obligations in segregated accounts at values which at no time shall be greater than current market value, determined as of the close of the market on the last preceding market day.

(e) The deposit and/or investment of money as provided in paragraphs (a) or (b) of this section shall not operate to prevent the person so depositing and/or investing such money from receiving and retaining as its own any increment or interest resulting therefrom.

(f) The amount of money, securities and property which is and which must be in a segregated account in order to comply with the requirements of this part shall be computed by each person required to segregate such money, securities and property as of the close of each business day. A record of such computation shall be made and kept, together with all supporting data in accordance with the provisions of §1.31 of this chapter. Such computation shall be made prior to the opening of business on the next business day.

(Approved by the Office of Management and Budget under control number 3038-0003)

[41 FR 51814, Nov. 24, 1976, as amended at 46 FR 63036, Dec. 30, 1981]

§ 32.7 Books and recordkeeping.

(a) Each person which accepts any money, securities or property (or extends credit in lieu thereof) from an option customer as payment of the purchase price in connection with a commodity option transaction shall keep full, complete and systematic records together with all pertinent data and memoranda of or relating to such transactions. Such records shall at least include all orders (filled, unfilled or cancelled), signature cards, books of records, journals, ledgers, cancelled checks, copies of all statements of purchase, exercise or lapse, and reports, letters, disclosure statements and confirmation statements required by §32.5 of this part, solicitation or advertising material (including the texts of standardized oral presentations and of radio, television, seminar or similar mass media presentations), circulars, memoranda, publications, writings, and all other literature or written advice distributed to option customers or prospective option customers. Upon the request of an authorized representative of the Commission, such person shall furnish the true name and address of each commodity option customer or prospective commodity option customer solicited.

(b) Each person referred to in paragraph (a) of this section shall also keep a record in permanent form which shall show the true name and address of each maker, underwriter, issuer or other person who assumes or purports to assume any financial responsibility for the fulfillment of any commodity option transaction solicited or accepted by such person, to the extent that such information is known or may be reasonably obtained by such person.

(c) Each person which accepts an order for a commodity option transaction from a person other than an option customer, shall keep full, complete and systematic records together with all pertinent data and memoranda of or relating to the transaction. Such records shall at least include the items set forth in paragraph (b) of this section and, to the extent necessary to reflect such person's participation in the transaction, shall include all items set forth in paragraph (a) of this section.

(d) Each person which accepts an order for a commodity option shall immediately upon receipt thereof prepare a written record of such order, including an account identification and order number, and shall record thereon by timestamp or other device, the date and time, to the nearest minute, that (1) the order is accepted, (2) the order is transmitted for execution, and (3) the order is executed.

(e) All records, memoranda and other documents required to be maintained by paragraphs (a) through (c) of this section, and to be prepared by paragraph (d) of this section shall be retained for the period specified in §1.31 of this chapter, and each person required to maintain such records shall be required to produce the same for inspection and furnish true and correct copies thereof and information and reports as to the contents or meaning thereof when and as requested by any authorized representative of the Commission or the United States Department of Justice.

(Approved by the Office of Management and Budget under control number 3038-0001)

[41 FR 51814, Nov. 24, 1976, as amended at 46 FR 63036, Dec. 30, 1981]

§ 32.8 Unlawful representations; execution of orders.

It shall be unlawful for:

(a) Any person required to be registered with the Commission in accordance with this part expressly or impliedly to represent that the Commission, by declaring effective the registration of such person or otherwise, has directly or indirectly approved such person, or any commodity option transaction solicited or accepted by such person;

(b) Any person in or in connection with an offer to enter into, the entry into, or the confirmation of the execution of, any commodity option transaction expressly or impliedly to represent that compliance with the provisions of this part constitutes a guarantee of the fulfillment of the commodity option transaction;

(c) Any person, upon receipt of an order for a commodity option transaction, unreasonably to fail to secure prompt execution of such order.

§ 32.9 Fraud in connection with commodity option transactions.

It shall be unlawful for any person directly or indirectly:

(a) To cheat or defraud or attempt to cheat or defraud any other person;

(b) To make or cause to be made to any other person any false report or statement thereof or cause to be entered for any person any false record thereof;

(c) To deceive or attempt to deceive any other person by any means whatsoever;

in or in connection with an offer to enter into, the entry into, or the confirmation of the execution of, any commodity option transaction.

§ 32.10 Option transactions entered into prior to the effective date of this part.

Nothing contained in this part shall be construed to affect any lawful activities that occurred prior to the effective date of this part.

§ 32.11 Suspension of commodity option transactions.

(a) Notwithstanding any other provision of this part 32, it shall be unlawful on and after June 1, 1978, until further

rule, regulation or order of the Commission, for any person to solicit or accept orders for, or to accept money, securities or property in connection with, the purchase or sale of any commodity option, or to supervise any person or persons so engaged.

(b) The provisions of paragraph (a) of this section shall not apply to any commodity option transaction conducted in accordance with the provisions of §32.4(a) of this part, or any commodity option transaction conducted on or subject to the rules of a contract market or a foreign board of trade in accordance with the provisions of section 4c of the Act and any rule, regulation or order promulgated thereunder.

(c) Nothing in this section shall apply to, or affect the rights, privileges or obligations of any person arising out of any commodity option transaction entered into prior to June 1, 1978.

(7 U.S.C. 2, 6c(a), 6c(b) and 12a (1976); secs. 2(a)(1), 4c(a)-(d), 4d, 4f, 4g, 4k, 4m, 4n, 8a, 15 and 17, Commodity Exchange Act (7 U.S.C. 2, 4, 6c(a)-(d), 6f, 6g, 6k, 6m, 6n, 12a, 19 and 21; 5 U.S.C. 552 and 552b))

[43 FR 16161, Apr. 17, 1978, as amended at 52 FR 29003, Aug. 5, 1987]

§32.12 Exemption from suspension of commodity option transactions.

(a) The provisions of §32.11 shall not apply to the solicitation or acceptance of orders for, or the acceptance of money, securities, or property in connection with, the purchase or sale of any commodity option on a physical commodity granted by a person domiciled in the United States who, on May 1, 1978, was both in the business of granting options on a physical commodity and in the business of buying, selling, producing, or otherwise utilizing that commodity, if all of the following conditions are met at the time of the solicitation or acceptance:

(1) The grantor has a net worth of at least \$1,000,000;

(2) Under the express contractual terms of each option offered by the grantor (or under such terms and conditions as are found satisfactory to the Commission which would provide option customers substantially equivalent financial protection), the grantor is liable jointly and severally with any

person that sells its options to an option customer for all damages sustained by any option customer in connection with the offer and sale of an option as the result of any unlawful act or omission or any breach of contract by any person or firm who sold the option to the option customer or by any agent or employee of that person;

(3) The grantor segregates daily, exclusively for the benefit of option customers, money, "exempted securities" (within the meaning of section 3(a)(12) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(12)), commercial paper, bankers' acceptances, commercial bills, or unencumbered warehouse receipts, equal to an amount by which the value of each transaction exceeds the amount received or to be received by the grantor for such transaction;

(4) The grantor provides an identification number for each transaction;

(5) The grantor provides to the futures commission merchant selling the option a confirmation of all orders for such transactions executed, including striking price and premium and a transaction identification number;

(6) Each person who is offering and selling the option to an option customer (i) is fully in compliance with each and every requirement of this part 32, (ii) includes in the confirmation statement required by §32.5(d) to be furnished to option customers the transaction identification number provided by the grantor, (iii) makes such reports to the Commission as are provided for in paragraphs (f) and (h) of this section and as the Commission may otherwise require by rule or regulation or order, and (iv) keeps a record in permanent form which shows, for each commodity option account carried by such person

(A) The principal occupation or business of the option customer owning the account,

(B) The name and address of any other person having a financial interest in such account,

(C) The name, address and principal business or occupation of any other person exercising any trading control with respect to such account, and

(D) An indicator of whether the account is traded for speculative purposes or for other than speculative purposes;

(7) Neither the grantor nor the person who is offering and selling the option to any option customer nor any officer or director or principal shareholder or partner or controlling person of either:

(i) Has within ten years been convicted of any felony or misdemeanor involving the purchase or sale of any commodity or security, or any option on any commodity or security, or

(ii) Is permanently or temporarily enjoined by order, judgment or decree of any court of competent jurisdiction from acting as a commodity pool operator, futures commission merchant, or floor broker, or as an affiliated person or employee of any of the foregoing, or from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of commodities or securities or options on commodities or securities; or

(iii) Is subject to an outstanding order of the Commission denying trading privileges on any contract market to such person, or suspending or revoking the registration of such person as a commodity trading advisor, commodity pool operator, futures commission merchant, associated person of a futures commission merchant or floor broker, or suspending or expelling such person from membership on any contract market;

(8) Before any grantor of any option shall commence to offer and sell options under authority of this paragraph the grantor shall (i) notify the Commission in writing of the name of each person selling its options and that it meets each and every requirement set forth in this paragraph, (ii) provide evidence of compliance with each provision of this section by affidavit executed upon actual knowledge by the proprietor of a sole proprietorship grantor, a general partner of a partnership grantor, or the chief executive officer or chief financial officer of a corporate grantor, and (iii) submit to the Commission its most recent annual financial statements for a fiscal year subsequent to May 31, 1977, certified by an independent certified public ac-

countant in accordance with generally accepted accounting principles;

(b)(1) The grantor of any option publicly offered pursuant to paragraph (a) of this section shall keep full, complete and systematic records together with all pertinent data and memoranda of or relating to such transactions and make such reports to the Commission as provided for in paragraphs (g) and (h) of this section and as the Commission may otherwise require by rule or regulation or order.

(2) It shall be unlawful for any grantor to sell an option through any person that acquires the option with a view to resale to an option customer (i) if the identity of that person has not previously been reported in writing to the Commission; (ii) if the grantor knows or has reason to know that the person is disqualified pursuant to paragraph (a)(7) of this section; or (iii) if the grantor knows or has reason to know that the person or firm is not complying with the requirements of this part 32 in any respect.

(3) It shall be unlawful for any futures commission merchant to offer or sell an option acquired from a grantor to any other futures commission merchant.

(4) The grantor of any option offered and sold to an option customer pursuant to paragraph (a) shall be liable jointly and severally with any person that sells its options to option customers for all damages sustained by the option customer in connection with the offer and sale of an option as the result of any unlawful act or omission or any breach of contract by any person who sold the option to the option customer or by any agent or employee of that person except to the extent that the Commission may find other terms and conditions satisfactory to provide option customers substantially equivalent financial protection pursuant to paragraph (a)(2). Upon timely application the grantor may intervene in any reparation proceeding brought by an option customer pursuant to section 14 of the Commodity Exchange Act based upon any act or omission for which the grantor may be liable.

(c) Upon written application the Commission may for good cause shown

in any particular case waive the requirements of any provision of paragraph (a) or (b) of this section subject to such other terms and conditions as the Commission may find appropriate in the public interest and for the protection of option customers.

(d) [Reserved]

(e) In the event that any provision of this section or the application thereof to any person or circumstance should be held invalid, the validity of §32.11 to those or other persons or circumstances shall not be affected thereby.

(f) Each person registered as a futures commission merchant which offers or sells options to option customers pursuant to paragraph (a) of this section shall file a report with the Commission on form CFTC-145 for any month during which such person entered into an option transaction with an option customer or acquired an option for its own account from a §32.12 grantor. Such reports shall be filed with the Commission office in New York, N.Y., by the tenth business day of the month following the month covered by the report and shall contain the following information by option grantor and option contract:

(1) For option-customer accounts:

(i) The number of open option contracts, end of month.

(ii) The number of open option contracts, end of month, held in accounts classified by the FCM as being traded for other than speculative purposes.

(iii) The number of option contracts entered into during the month.

(iv) The number of option contracts entered into during the month for accounts classified by the FCM as being traded for other than speculative purposes.

(v) The aggregate purchase price, as defined in §32.1(d), received and due from option customers for option contracts entered into during the month.

(vi) The total of premiums and fees paid to and due to the option grantor for option contracts entered into by option customers during the month.

(2) For proprietary accounts of such person, as defined in §1.3(y): (i) The number of open option contracts, end of month.

(ii) The number of option contracts entered into with the option grantor during the month.

(iii) The total of premiums and fees paid to and due to the option grantor for option contracts entered into during the month.

(g) The grantor of any option publicly offered or sold during any calendar month pursuant to paragraph (a) of this section shall file reports with the Commission at its office in New York, N.Y. with respect to all commodity-option transactions entered into by the grantor during such month. Such reports are due by the tenth business day of the month following the month covered by the reports and shall be filed on forms CFTC 146, 147, 148, 149, 150, 151, 152, 153 and 154.

(1) Such reports shall contain the following information with respect to all commodity options that were not publicly offered pursuant to paragraph (a) of this section:

(i) By commodity, call or put, and expiration month:

(A) The total quantity of the underlying commodity on which options were bought directly from or granted directly to accounts classified by the grantor as being traded for other than speculative purposes.

(B) The total quantity of the underlying commodity on which options, bought directly from or granted directly to accounts classified by the grantor as being traded for other than speculative purposes, were open as of the last business day of the month.

(ii) By commodity and call or put;

(A) The total quantity of the underlying commodity on which options bought directly from or granted directly to accounts classified as being traded for other than speculative purposes were exercised during the month.

(B) The total quantity of the underlying commodity on which options bought directly from or granted directly to accounts classified as being traded for other than speculative purposes expired during the month.

(2) Such reports shall contain the following information with respect to all commodity options that were publicly offered pursuant to paragraph (a) of this section:

(i) By option contract and expiration date:

(A) The value of option contracts repurchased from option customers through FCM's during the month.

(B) The value of new sales to option customers through FCM's during the month.

(ii) By option contract, expiration date and strike price:

(A) The number of option contracts repurchased from and granted to option customers through FCM's during the month.

(B) The number of option contracts granted to option customers through FCM's which were open as of the last business day of the month.

(C) The bid and ask option premiums available to option customers through FCM's as of the last business day of the month.

(iii) By option contract:

(A) The number of option contracts previously bought by option customers through FCM's which were exercised during the month.

(B) The number of option contracts previously bought by option customers through FCM's which expired during the month.

(iv) By option contract and offering FCM:

(A) The value of premiums and fees received by and due to the grantor for option contracts sold through FCM's during the month.

(B) The number of option contracts open as of the last business day of the month.

(C) The number of option contracts sold during the month.

(h) All information required upon special call as set forth in this paragraph (h) shall be prepared in such form and manner, and summarized in accordance with such instructions, and shall be transmitted at such time and to such office of the Commission, as may be specified in the call.

(i) Upon call by the Commission, each futures commission merchant shall furnish to the Commission for the grantor(s), the option contract(s), the expiration date(s), the strike price(s) and the transaction date(s) any of the following information that is specified in such call for any accounts, including proprietary accounts of such futures

commission merchant, in which open dealer-option contracts are carried on the records of such futures commission merchant:

(i) The name(s) and address(es) of the account owner(s).

(ii) The principal business or occupation and industry of the account owner(s).

(iii) The kind of account.

(iv) The name(s), address(es) and principal business or occupation and industry of any other person(s) who controls the trading of the account.

(v) The name(s) and address(es) of any other person(s) having a financial interest in the account.

(vi) Identification of those accounts that trade dealer options for other than speculative purposes.

(vii) The number of open dealer-option contracts held or controlled by such traders.

(viii) The aggregate purchase price (as defined in §32.1(d)) received from option customers for the purchase of dealer-option contracts.

(ix) The premiums and fees paid to and due to the grantor for the purchase of dealer-option contracts.

(2) Upon call by the Commission, each grantor shall furnish to the Commission for the option contract(s), the expiration date(s), the strike price(s) and the transaction date(s) any of the following information which is specified in such call:

(i) Premium levels.

(ii) For any accounts, including accounts owned or controlled by the grantor, in which open option contracts are carried on the records of such option grantor:

(A) The name(s) and address(es) of the account owner(s);

(B) The principal business or occupation and industry of the account owner(s), other than the account of an FCM selling such grantor's options to the public;

(C) The kind of account, other than the account of an FCM selling such grantor's options to the public;

(D) Identification of those accounts, other than the account of an FCM selling such grantor's options to the public, that trade such options for other than speculative purposes;

(E) The number of open option contracts in the account;

(F) The number of option contracts exercised.

(i)(1) For purposes of paragraphs (a), (f), (g) and (h) of this section, accounts classified as being "traded for other than speculative purposes" shall be limited to accounts of producers, processors, commercial users or merchants which handle the commodity which is the subject of the commodity-option transaction, or the products or by-products thereof, as part of their business.

(2) The term "option contract" as used in paragraphs (f), (g) and (h) of this section shall refer to either a call or a put on a specified weight of the underlying commodity.

(The information collection requirements contained in §32.12 were approved by the Office of Management and Budget under control number 3038-0001; in paragraph (a) under control number 3038-0003)

[43 FR 23707, June 1, 1978, as amended at 43 FR 52469, Nov. 13, 1978; 43 FR 54226, Nov. 21, 1978; 46 FR 63036, Dec. 30, 1981]

§32.13 Exemption from prohibition of commodity option transactions for trade options on certain agricultural commodities.

(a) The provisions of §32.11 shall not apply to the solicitation or acceptance of orders for, or the acceptance of money, securities or property in connection with, the purchase or sale of any commodity option on a physical commodity listed in §32.2 by a person who is a producer, processor, or commercial user of, or a merchant handling, the commodity which is the subject of the commodity option transaction, or the products or byproducts thereof, if all of the following conditions are met at the time of the solicitation or acceptance:

(1) That person is registered with the Commission as an agricultural trade option merchant and that person's associated persons and their supervisors are registered as associated persons of an agricultural trade option merchant under §3.13 of this chapter.

(2) The option offered by the agricultural trade option merchant is offered to a producer, processor, or commercial user of, or a merchant handling, the

commodity which is the subject of the commodity option transaction, or the products or byproducts thereof, and such producer, processor, commercial user, or merchant is offered or enters into the commodity option transaction solely for purposes related to its business as such.

(3) The option cannot be off-set and, if exercised, must result in physical delivery of the underlying commodity; *Provided, however*, that nothing in this paragraph precludes amendment of the option contract's delivery date or the substitution of a forward contract agreement for the option contract prior to the option's expiration or exercise.

(4) To the extent that payment by the customer of the purchase price is made to the agricultural trade option merchant prior to option expiration or exercise, that amount:

(i) May only be used by the agricultural trade option merchant to purchase a covering position on a contract market designated under section 6 of the Act or part 33 of this chapter; and

(ii) Any amount not so used, shall be treated as belonging to the customer until option expiration or exercise as provided under §32.6, *provided, however*, that notwithstanding the last proviso of §32.6(a), the full amount of such payment shall be treated as belonging to the option customer.

(5) Producers may not:

(i) Grant or sell a put option; or

(ii) Grant or sell a call option, except to the extent that such a call option is purchased or combined with a purchased or long put option position, and only to the extent that the customer's call option position does not exceed the customer's put option position in the amount to be delivered. *Provided, however*, that the options must be entered into simultaneously and expire simultaneously or at any time that one or the other option is exercised.

(6) All option contracts, including all terms and conditions, offered or sold pursuant to this section shall be in writing, an executed copy of which shall be provided to the customer, and shall contain terms relating to the following:

(i) The procedure for exercise of the option contract, including the expiration date and latest time on that date for exercise;

(ii) The strike price(s) of the option contract;

(iii) The total quantity of commodity underlying the option contract;

(iv) The quality or grade of commodity to be delivered if the contract is exercised and any adjustments to price for deviations from stated quality or grade, or the range of, and a statement of the method for calculating, such adjustments;

(v) The delivery location if the contract is exercised;

(vi) The separate elements comprising the purchase price to be charged, including the premium, mark-ups on the premium, costs, fees and other charges; and

(vii) The additional costs, if any, in addition to the purchase price which may be incurred by an option customer if the commodity option is exercised, including, but not limited to, the amount of storage fees, interest, commissions (whether denominated as sales commissions or otherwise) and all similar fees and charges which may be incurred.

(7) Prior to the entry by a customer into the first option transaction with an agricultural trade option merchant, the agricultural trade option merchant shall furnish, through written or electronic media, a summary disclosure statement to the option customer. The summary disclosure statement shall include:

(i) The following statements in bold-face type on the first page(s) of the summary disclosure statement:

This brief statement does not disclose all of the risks and other significant aspects of trading in commodity trade options. You are encouraged to seek out as much information as possible from sources other than the person selling you this option about the use and risks of option contracts before entering into this contract. The issuer of your option should be willing and able to answer clearly any of your questions.

Appropriateness of Option Contracts

Option contracts may result in the total loss of any funds you pay to the issuer of your option. You should carefully consider whether trading in such instruments is ap-

propriate for you in light of your experience, objectives, financial resources and other relevant circumstances. The issuer of your option contract should be willing and able to explain the financial outcome of your option contract under all market conditions. You should also be aware that you may be able to obtain a similar contract or execute a similar risk management strategy using an instrument traded on a futures exchange which offers greater regulatory and financial protections.

Costs and Fees Associated With an Option Contract

Before entering into an option contract, you should understand all of the costs and obligations associated with your option contract. These include the option premium, commissions, fees, costs associated with delivery if the option is exercised and any other charges which may be incurred. All of these costs and fees must be specified in the terms of your option contract and must be explained in the transaction disclosure statement.

Business Use of Trade Options

In order to comply with the law, you must be buying this option for business-related purposes. The terms and structure of the contracts must therefore relate to your activity or commitments in the underlying cash market. If a trade option is exercised, delivery of the commodity must occur. Any amendments allowed to the option contract must reflect changes in your activity, in your commitments in the underlying cash market or in the carrying of inventory. Producers are not permitted to enter into short call options unless the producer is also entering into a long put option contract for the same amount or more of the commodity, at the same time and with the same expiration date. Producers are not permitted to sell put options, whether alone or in combination with a call option.

Dispute Resolution

If a dispute should arise under the terms of this trade option contract, you have the right to choose to use the reparations program run by the Commodity Futures Trading Commission or any other dispute resolution forum provided to you under the terms of your customer agreement or by law. For more information on the Commission's Reparations Program contact: Office of Proceedings, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, (202) 418-5250.

Acknowledgement of Receipt

The Commodity Futures Trading Commission requires that all customers receive and

acknowledge receipt of this disclosure statement. The Commodity Futures Trading Commission does not intend this statement as a recommendation or endorsement of agricultural trade options. These commodity options have not been approved or disapproved by the Commodity Futures Trading Commission, nor has the Commission passed upon the accuracy or adequacy of this disclosure statement. Any representation to the contrary is a violation of the Commodity Exchange Act and Federal regulations.

(ii) The following acknowledgment section:

I hereby acknowledge that I have received and understood this summary risk disclosure statement.

Date

Signature of Customer

(8) Prior to entry by a customer into each option transaction with an agricultural trade option merchant, the agricultural trade option merchant shall furnish, through written or electronic media, a transaction disclosure statement to the option customer. The transaction disclosure statement shall include the following information:

(i) The procedure for exercise of the option contract, including the expiration date and latest time on that date for exercise;

(ii) A description of the elements comprising the purchase price to be charged, including the premium, mark-ups on the premium, costs, fees and other charges, and the services to be provided for the separate elements comprising the purchase price;

(iii) A description of any and all costs in addition to the purchase price which may be incurred by an option customer if the commodity option is exercised, including, but not limited to, the amount of storage fees, interest, commissions (whether denominated as sales commissions or otherwise) and all similar fees and charges which may be incurred;

(iv) Where the full option premium or purchase price of the option is not collected up front or where through amendments to the option contract it is possible to lose more than the amount of the initial purchase price of the option, a description of the worst possible financial outcome on the con-

tract that could be suffered by the customer; and

(v) The following acknowledgment section:

I hereby acknowledge that I have received and understood this transaction risk disclosure statement.

Date

Signature of Customer

(b) *Report of account information.* Registered agricultural trade option merchants must provide customers with open positions the following information:

(1) Within 24 hours of execution of an agricultural trade option, written confirmation of the transaction, including an executed copy of the written contract and all information required in paragraph (a)(6) of this section;

(2) Within 24 hours of a request by the customer, or 48 hours of a request for a response in writing, current commodity price quotes, all other information relevant to the customer's position or account, and the amount of any funds owed by, or to, the customer;

(3) Written notice of the expiration date of each option which will expire within the subsequent calendar month.

(c) *Recordkeeping.* Registered agricultural trade option merchants shall keep full, complete and systematic books and records together with all pertinent data and memoranda of or relating to such transactions, including customer solicitations and covering transactions, maintain such books and records as specified in §1.31 of this chapter, and make such reports to the Commission as provided for in paragraphs (c) and (d) of this section and as the Commission may otherwise require by rule, regulation, or order. Such books and records shall be open at all times to inspection by any representative of the Commission and the United States Department of Justice.

(d) *Reports.* Registered agricultural trade option merchants must file reports quarterly with the National Futures Association, in the form and manner specified by the National Futures Association and approved by the Commission, which shall contain the following information:

(1) By commodity and put, call or combined option:

(i) Total number of new contracts entered into during the reporting period;

(ii) Total quantity of commodity underlying new contracts entered into during the reporting period;

(iii) Total number of contracts outstanding at the end of the reporting period;

(iv) Total quantity of underlying commodity outstanding under option contracts at the end of the reporting period;

(v) Total number of options exercised during the reporting period; and

(vi) Total quantity of commodity underlying the exercise of options during the reporting period.

(2) Total number of customers by commodity with open option contracts at the end of the reporting period.

(e) *Special calls.* Upon special call by the Commission for information relating to agricultural trade options offered or sold on the dates specified in the call, each agricultural trade option merchant shall furnish to the Commission within the time specified the following information as specified in the call:

(1) All positions and transactions in agricultural trade options including information on the identity of agricultural trade option customers and on the value of premiums, fees, commissions, or charges other than option premiums, collected on such transactions.

(2) All related positions and transactions for future delivery or options on contracts for future delivery or on physicals on all contract markets.

(3) All related positions and transactions in cash commodities, their products, and by-products.

(f) *Internal controls.* (1) Each agricultural trade option merchant registered with the Commission shall prepare, maintain and preserve information relating to its written policies, procedures, or systems concerning the agricultural trade option merchant's internal controls with respect to market risk, credit risk, and other risks created by the agricultural trade option merchant's activities, including systems and policies for supervising, monitoring, reporting and reviewing trading activities in agricultural trade op-

tions; policies for hedging or managing risk created by trading activities in agricultural trade options, including a description of the types of reviews conducted to monitor positions; and policies relating to restrictions or limitations on trading activities.

(2) The financial statements of the agricultural trade option merchant must on an annual basis be audited by a certified public accountant in accordance with generally accepted auditing standards.

(3) The agricultural trade option merchant must file with the Commission a copy of its certified financial statements within 90 days after the close of the agricultural trade option merchant's fiscal year.

(4) The agricultural trade option merchant must perform a reconciliation of its books at least monthly.

(5) The agricultural trade option merchant:

(i) Must report immediately if its net worth falls below the level prescribed in § 3.13(d)(i) of this chapter and must report within three days discovery of a material inadequacy in its financial statements by an independent public accountant or any state or federal agency performing an audit of its financial statements to the Commission and National Futures Association by facsimile, telegraphic or other similar electronic notice; and

(ii) Within 5 business days after giving such notice, the agricultural trade option merchant must file a written report with the Commission stating what steps have been taken or are being taken to correct the material inadequacy.

(6) If the agricultural trade option merchant's net worth falls below the level prescribed in § 3.13(d)(i) of this chapter, it must immediately cease offering or entering into new option transactions and must notify customers having premiums which the agricultural trade option merchant is holding under paragraph (a)(4) of this section that such customers can obtain an immediate refund of that premium amount, thereby closing the option position.

(g) *Exemption.* (1) The provisions of §§ 3.13, 32.2, 32.11 and this section shall

not apply to a commodity option offered by a person which has a reasonable basis to believe that:

(i) The option is offered to a producer, processor, or commercial user of, or a merchant handling, the commodity which is the subject of the commodity option transaction, or the products or byproducts thereof;

(ii) Such producer, processor, commercial user or merchant is offered or enters into the commodity option transaction solely for purposes related to its business as such; and

(iii) Each party to the option contract has a net worth of not less than \$10 million or the party's obligations on the option are guaranteed by a person which has a net worth of \$10 million and has a majority ownership interest in, is owned by, or under common ownership with, the party to the option.

(2) *Provided, however,* that §32.9 continues to apply to such option transactions.

[63 FR 18832, Apr. 16, 1998]

PART 33—REGULATION OF DOMESTIC EXCHANGE-TRADED COMMODITY OPTION TRANSACTIONS

Sec.

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AUTHORITY: 7 U.S.C. 1a, 2, 4, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 7b, 8, 9, 11, 12a, 12c, 13a, 13a-1, 13b, 19, and 21, otherwise noted.

SOURCE: 46 FR 54529, Nov. 3, 1981, unless otherwise noted.

§33.1 Definitions.

As used in this part:

(a) *Purchase price* means the total amount paid or to be paid, directly or indirectly, by a person to acquire a commodity option.

(b) *Promotional material* includes: (1) Any text of a standardized oral presentation, or any communication for publication in any newspaper, magazine or similar medium, or for broadcast over television, radio, or other electronic medium, which is disseminated or directed to an option customer or prospective option customer concerning a commodity option transaction; (2) any standardized form of report, letter, circular, memorandum, or publication which is disseminated or directed to an option customer or prospective option customer; and (3) any other written material disseminated or directed to an option customer or prospective option customer for the purpose of soliciting an option transaction, including any disclosure statement required by §33.7.

§33.2 Applicability of Act and rules; scope of part 33.

(a) Except as otherwise specified in this part and unless the context otherwise requires:

(1) Each board of trade designated, or applying for designation, by the Commission as a contract market for the purpose of trading commodity options pursuant to this part shall be deemed for such purpose to be a "board of trade," "exchange," and a "contract market" and, with respect to commodity option transactions conducted pursuant to such designation, shall comply with and be subject to all of the provisions of the Act relating to boards of trade, exchanges, or contract markets as though such provisions were set forth herein; and

(2) The provisions of sections 1a, 2(a)(1), 2(a)(8)(B), 4, 4a, 4c(a), 4d, 4e, 4f, 4g, 4h, 4i, 4j, 4k, 4m, 4n, 5, 5a(a), 5b, 6, 6a, 6b, 6c, 7, 8(a)-(e), 8a, 8b, 8c, and 16 of the Act shall apply to commodity option transactions that are subject to the requirements of this part as though such provisions were set forth herein and included specific references to commodity option transactions. Nothing contained in this section shall be